

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

74-2181

WF
with M
Dunlap

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

-v-

EUGENIO FARINAS,

74 Cr. 704

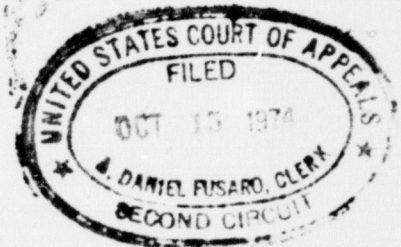
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Defendant.

BRIEF FOR DEFENDANT-APPELLANT

EUGENIO FARINAS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JOSEPH I. STONE
Attorney for Defendant
Office & P.O. Address
277 Broadway
New York, New York 10007

TO: PAUL J. CURRAN, ESQ.
United States Attorney
Southern District of New York
United States Courthouse
Foley Square, New York 10007

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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EUGENIO FARINAS,
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Defendant.
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7 Cr. 704

BRIEF FOR DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

The petitioner-appellant, Eugenio Farinas, appeals from a judgment of conviction entered August 22, 1974, wherein the defendant was found guilty in a non-jury trial before Hon. Edward Weinfeld for violating Title 18, United States Code, Sections 1201(a) and 875(c) (kidnaping, conspiracy and interstate telephone communication). The defendant was sentenced to three years imprisonment and has been incarcerated since the day of his arrest.

STATEMENT OF ACTS

Eugenio Farinas was arrested on June 12, 1974, while in the presence of Roman Villegas in the vicinity of Route 1-9 and 91st Street in North Bergen, New Jersey. The arrest took place after the F.B.I. conducted surveillance of this vehicle from New York to New Jersey, where it met with a vehicle driven by Mrs. Teresa Lopez, allegedly to pay off ransom for the return of her husband, Orlando Lopez. Judge Weinfeld heard the testimony of Roman Villegas, who pleaded guilty to the charge of kidnaping; the testimony of Irene Gonzales, who also pleaded

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guilty to a lesser charge of aiding in the kidnaping, the testimony of Rosa Ramirez, a friend of Roman Villegas; and the testimony of Orlando Lopez, the victim; his wife, as mentioned above, and four F.B.I. agents.

At the conclusion of the government's case, Judge Weinfeld stated, to the best of my recollection, that "the government has proved a kidnaping beyond any peradventure of doubt". The only issue remaining was whether Farinas was aware of the kidnaping and aided in carrying out any of the schemes to obtain ransom.

Villegas, Ramirez and Gonzales testified that Farinas was present several weeks before, when it was agreed that someone would kidnap Lopez. After Lopez was kidnaped and taken to several motels in New Jersey, a series of phone calls emanated from the kidnapers to the home of Mrs. Lopez and her sister, Sylvia Pelliccio, in Spring Valley, New York. The phone calls established beyond any question that certain individuals wanted ransom for the return of Orlando Lopez. Many of these phone conversations were tapped with the consent of one party to the conversation and transcripts were available to the defendant at the time of trial.

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After several aborted attempts to collect the ransom by Villegas and co-defendant Iglesias (since deceased), Villegas returned to a Bronx apartment where he met Farinas. According to Villegas, Farinas was going to go with him to get the ransom money.

The ensuing surveillance was instrumental in Judge Weinfeld's decision or finding because the F.B.I. agents and Mr. Lopez testified that when they followed the car driven by Villegas, Farinas, the passenger, continually gave overt hand signals directing them through the circuitous routes in New Jersey. Farinas testified on his own behalf stating he did not know of the kidnapping attempt and was not aware that Villegas was about to receive ransom. He explained the hand signals simply by saying that because of his Cuban heritage, he often uses his hands when he talks and did not give any signals to the car behind him except when they were backing down from a dead end street moments before his arrest. Judge Weinfeld heard argument from both defense counsel and the United States Attorney and agreed that the issue in this case was one of credibility. Judge Weinfeld accepted ^{the} credibility of Villegas and the other two witnesses as establishing the existence of a conspiracy and

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establishing Farinas' knowledge of the purposes of the conspiracy and discounted Farinas' explanations as to why he was in the car. It was my recollection that Judge Weinfeld referred to Farinas' testimony as "incredible".

Farinas at the time of trial attempted to ascertain that Villegas was not a Puerto Rican, was not in reality Villegas and had a criminal record.

At the time of sentencing, the government made known to the undersigned and Farinas that these facts were true; i.e., that Villegas was Cuban, had a different name and had a pending case in New Jersey. Judge Weinfeld made it very clear at the time of sentencing that these facts would not have made "the slightest bit of difference" in his decision.

Iglesias at the time of trial was a fugitive and according to published newspaper reports, has since been murdered.

From existing court records, it has been ascertained that Irene Gonzales received a one-year sentence and Rosa Ramirez has not been prosecuted.

Roman Villegas received a five year sentence on August 22, 1974.

In addition to Farinas' own testimony, Farinas

called four inmates of West Street to testify as to conversations they had with Villegas which would have proven that Farinas did not commit the crimes and that Villegas was testifying against him to "save his skin". Judge Weinfeld, sitting without a jury, permitted this "hearsay" testimony to be received but stated at the conclusion of the case that the witnesses offered by the defendant, who are cumulatively serving approximately one hundred years in jail (this was before two of them escaped) did not add much credence to the defendant's position.

On the basis of all the above facts, Eugenio Farinas urges this court to reverse the judgments of conviction previously entered pursuant to Anders v. California.

Respectfully submitted,

JOSEPH I. STONE
Attorney for defendant

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